IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4542 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUAJRAT THR' EXECUTIVE ENGINEER - Petitioner
Versus
SPUN PIPE & CONSTRUCTION CO.(BARODA) PVT.LTD. & 1 - Respondents

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Appearance :
MR NIRAJ SONI, Assistant Government Pleader for Petitioner.
MR KG SUKHWANI for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/10/2007

ORAL JUDGMENT

1. The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India challenging the order passed by the learned Additional District Judge, Vadodara below an application Exh.17 in Misc. Application (Arbitration) No.148 of 2002 on 6.10.2005, whereby further objections filed by the petitioner vide Exh. 16 were ordered to be rejected and ordered to be filed.

2. It is the case of the petitioner that the State of Gujarat invited the tenders pertaining to the work of providing and connecting the Hume Steel Pipes. An agreement between the parties was entered into on 14.7.1992. The work order was issued to the present respondent No.1. The respondent No.1 was required to complete the work within the prescribed time period. Because of the failure on the part of the respondent No.1 90% work was completed and 10% work was to be completed in February, 1995. The respondent No.1 carried out work of Rs.99,98,054/- and the tender cost was fixed at Rs.1,01,53,000/-. Payment thereof had already been made by the State Government through various running account bills. The respondent No.1 submitted the final bill in the year 1995 wherein they have claimed an amount of Rs.51,000/- as dues alongwith nine points, towards various dues on 22.1.1995. The total final bill as per say of the respondent came to Rs.9.94 lacs. The respondent No.1 sent reminders for Rs.9.94

lacs. On 28.9.1996 the respondent No.1 gave notice for Rs.1 crore approximately without giving any details towards those claims and without producing any evidence to support the claim. The said claim was made after the expiry period of one and half years of submitting the final bill. The respondent No.1 preferred an arbitration proceeding and Mr. R.O. Parikh was appointed as sole Arbitrator who passed an award on 16.5.2002 in favour of the respondent No.1.

3. Being aggrieved and dissatisfied with the award passed by the sole Arbitrator on 16.5.2002, the petitioner preferred Civil Misc. Application (Arbitration) No. 148 of 2002 before the District Court, Vadodara. The said application was preferred within the prescribed time limit as per the provision contained in Section 34 (3) of the Arbitration and Conciliation Act, 1996. At the time of filing of the objections, the petitioner reserved right for filing detailed objections in future. The respondent No.1 has not filed his reply. On 18.10.2003, the petitioner filed further detailed objections for clarifying certain details before the District Court, Vadodara at Ex.16.

4. On 15.11.2003 the respondent No.1 filed preliminary objection at Ex.17 whereby the respondent No.1 had taken objection that the further objection cannot be filed as the time limit for filing objections under Section 34 (3) of the Act has

already been over. The learned District Judge, Vadodara has allowed the said application vide his order dated 6.10.2005 and held that the further objections filed by the petitioner vide Ex.16 are not within the prescribed period of time.

5. It is this order of learned Additional District Judge, Vadodara which is under challenge in the present petition.

6. This Court has admitted the petition and rule was issued on 13.3.2006 and notice as to interim relief was also issued on the same date. On 26.4.2006 the Court has passed an order directing the registry to fix the matter for final hearing in the first week of July, 2006 and during the pendency of the petition, further proceeding in connection with Civil Misc. Application No.148 of 2002 pending before the District Court was ordered to be stayed.

7. Mr. Niraj Soni, learned Assistant Government Pleader appearing for the petitioner has submitted that the order passed by the learned Additional District Judge, Vadodara below an Application Ex.17 is absolutely unjust, illegal and arbitrary. It is further submitted that the learned Additional District Judge has misread and misconstrued the provisions of law. The learned Judge has failed to appreciate that provisions contained under Section 34 (3) of the Act are applicable only to the filing of objection petition against the

order / award of the Arbitrator which does not apply to the details provided subsequently by any of the party. He has further submitted that the petitioner has already filed his objection within a prescribed time limit as per Section 34 (3) of the Act. It is further submitted that from bare reading of the Section, it becomes very clear that nowhere it is stated that the further details/ further objections cannot be filed thereafter. He has further submitted that non-acceptance of application Ex.16 would adversely affect the case of the petitioner and hence in the interest of justice, it should have been taken into consideration before deciding the award/order passed by the Arbitrator on its own merits.

8. In support of his submission Mr. Soni has relied on the decision of the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd., vs. J.A. Infra Structure(P) Ltd., reported in (2006) 8 Supreme Court Cases 21***, wherein the order passed by the High Court was set aside and the matter was remitted back to the District Court to decide the objections under Section 34(3) of the Arbitration and Conciliation Act, 1996 and to decide the same on merit after affording opportunity to the respondent. In that case, the Insurance Company filed Arbitration Petition under Section 34 of the Arbitration and Conciliation Act, 1996 in the High Court of judicature at Bombay and the said petition was

dismissed for want of jurisdiction and the Insurance Company thereafter filed fresh petition under Section 34 of the Act before the District Court, Nagpur alongwith application under Section 14 of the Limitation Act on 17.1.2005. The District, Court, Nagpur dismissed the application filed by the appellant Insurance Company under Section 14 of the Limitation Act and consequently, the application filed under Section 34 of the Act also stood dismissed. Aggrieved against the order passed by the District Court, the appellant again filed a writ petition before the High Court of Bombay at Nagpur Bench which was also dismissed on 21.12.2005. Aggrieved by the said judgment dated 21.12.2005, the appellant preferred the appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court following its own judgment in the case of Western Builders, reported in (2006) 6 SCC 239 held that Section 14 of the Limitation Act, 1963 was applicable in the Arbitration and Conciliation Act, 1996 and that the view taken by the Court below excluding the applicability of Section 14 in the said proceeding was not correct. Therefore, the order passed by the High Court was set aside and the matter was remitted back to the District Court to decide the objections under Section 34 (3) of the Arbitration and Conciliation Act, 1996 and decide the same on merit after affording opportunity to the other party.

9. Based on the aforesaid judgment, Mr. Soni strongly urged that here in the present case, the petitioner has filed original objections in time and leave was prayed for to file detailed objections later on. The petitioner was under the bonafide belief that the petitioner could file the further objection since no objection was raised by other side. When the said objections were filed later on which cannot be thrown on the ground that the provisions contained under Section 34 (3) of the Act would not permit to file such objections.

10. Mr. Sukhwani, learned advocate appearing for the respondent on the other hand has strongly urged that no interference is called for in the order passed by the learned Additional District Judge, Vadodara. He has further submitted that the law does not permit the petitioner to file detailed objections once the time limit prescribed under Section 34 (3) of the Act has elapsed. The petitioner has filed objection on 14.8.2002 i.e. within a period of 3 months. Thereafter, grace period of 30 days is permissible and hence beyond the period of 120 days no further objections can be filed. Since the learned Additional District Judge decided the matter keeping in mind the provisions contained in Section 34(3) of the Act, the petitioner does not deserve any relief from this Court and the petition is required to be dismissed on this ground.

11. In support of his submission, Mr. Sukhwani relied on the decision of Hon'ble Supreme Court in the case of ***Union of India vs. Popular Construction Co, reported in 2001 (3) RAJ 163 (SC)*** *and* Bombay High Court decisions in the case of ***Vastu Invest & Holdings Private Limited V/s. Gujarat Lease Financing Limited, reported in 2001 (4) RAJ 215 (Bom)*** and ***Esteem Mercantile Pvt. Ltd., vs. K.H.Parekh & Anr., reported in 2002 (1) RAJ 551 (Bom)***. Based on these judgments he has submitted that the further objections cannot be filed after the expiry of period of 120 days as prescribed under Section 34 (3) of the Act.

12. After having heard learned advocates for the respective parties and after having gone through the order passed by the learned Additional District Judge, Vadodara as well as the pleadings raised before the Court and the authorities cited, the Court is of the view that the provisions contained in Section 34 (3) of the Act have not been properly dealt with by the learned Additional District Judge. These provisions are applicable only to filing of the original objections against the award. Admittedly in the present case the petitioner has filed the objections in time i.e. within a period of 3 months. While filing the original objections, the petitioner has prayed for leave to file further objections. At that point of time, the

respondent has not raised any objection nor the Court has refused to grant such leave. When further objections were filed by the petitioner vide Exh. 16, the respondent No.1 filed application Exh.17 raising preliminary objection. Since the leave was prayed for by the petitioner to file further objection and it was neither objected nor expressly rejected, the respondents cannot raise such objection subsequently. In this view of the matter, the ratio laid down by the Hon'ble Supreme Court in the Case of ***Union of India vs. Popular Construction Co*** (Supra) will straightway be applicable to the facts of the present case and in any case the Hon'ble Supreme Court has quashed and set aside the order and directed the District Court to decide the objections on merit.

13. As far as the decisions cited by Mr. Sukhwani are concerned, the first decision is in respect of filing of the original objection and the Court took the view that where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the special inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded. The Court further observed that as far as language of Section 34 of the 1996 Act

is concerned, the crucial words are 'but not thereafter' used in the proviso to sub section (3). The Court, therefore, took the view that this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result. Admittedly, this decision is not applicable as the petitioner has filed the objections well within the time and the question with regard to filing of further objections did not arise before the Hon'ble Supreme Court. So far as decisions of Bombay High Court in the case of Vastu Invest & Holdings Private Limited V/s. Gujarat Lease Financing Limited and in the case of Esteem Mercantile Pvt. Ltd. V/s. K. H. Parekh and another, (Supra) are concerned, these decisions are in respect of seeking an amendment in the objections filed. Here, in the present case, the petitioner has not sought any amendment and hence these decisions are not applicable to the facts of the present case.

14. Considering the overall view of the matter and further considering the well recognized principle of law, equity and

justice, the Court is of the view that the further objections filed by the petitioner vide application Ex.16 are required to be taken into consideration. The Court is therefore of the view that the impugned order passed by the learned Additional District Judge, Vadodara is not sustainable and it is therefore quashed and set aside. The learned Additional District Judge, Vadodara is hereby directed to consider further objections raised by the petitioner vide application Ex.16 and decide the same alongwith the original application on their own merit.

15. The petition is accordingly allowed. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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